IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 1134 of 1982
with
CROSS OBJECTION [STAMP] NO.8845 of 1983

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SADRUDIN GULAMHUSSEIN & 1 - Appellant(s)
Versus
CHAMPABEN MAGANLAL GOPAL M. & 4 - Defendant(s)

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Appearance :
MR RAJNI H MEHTA for Appellant(s) : 1 - 2.
None for Respondents : 1 - 2.
DELETED for Respondents : 3 - 4.
None for Respondent : 5

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 14/06/2007

COMMON ORAL JUDGMENT

1. Shri R.H. Mehta, learned counsel for the

appellants – Sadruddin Gulamhussein and the New India Assurance Co. Ltd. It is to be noted that driver of the offending vehicle, namely, Karam Osman Sumra was originally joined as party appellant no.1, but during pendency of this appeal, he has been transposed as party respondent no.5.

2. The appellants have filed this appeal being aggrieved by the judgment and award dated 10.9.81 made by the learned Member, M.A.C. Tribunal, Jamnagar in M.A.C. Case No. 76/80 contenting inter alia, that no negligence could be contributed against the truck no. GTG 1739 or its driver, that is, respondent no.5.

3. In view of the observations made by the Supreme Court in the judgment in the matter of *H.S. Ahmmed Hussain v. Irfan Ahmed, reported in AIR 2002 SC 2483*, it would be clear that joint appeal would be maintainable only after the name of the Insurance Company is deleted. In the present matter, the appeal has, in fact, been filed by the Insurance Company and if all latitude is given in favour of the owner and the Insurance Company is transposed as party respondent, then too, appeal would not be maintainable, because, owner-appellant would not be allowed to fight for the interest of the Insurance Company. The appellant owner would have no cause of action, because, he is not to suffer any financial burden in view of the insurance of the vehicle and the direction by

the Tribunal that the Insurance Company is also liable to pay the amount. The joint appeal at the instance of the owner and the Insurance Company would not be maintainable in view of the above judgment of the Supreme Court and after transposition of the Insurance Company, the appeal at the instance of the owner would not be maintainable.

4. On the merits, it is to be seen that the Tribunal, in the opinion of this Court, rightly found that the driver of the truck No. GTG 1739 was rash and negligent and has occasioned the accident. From the findings, it would clearly appear that each of the driver had contributed to the negligence, but the owner and driver of the tanker no. GTZ 2456 had settled their claim outside the Court. In view of the said settlement, driver and owner of vehicle no. GTG 1739 cannot escape their liability and consequently, the Insurance Company would be answerable to the claim made by the claimants.

5. Being in general agreement with the findings recorded by the Tribunal, I hold that there is no scope for interference. The appeal deserves to and is accordingly dismissed.

6. Shri R.H. Mehta, learned counsel for the appellants submits that the respondents-claimants had filed some Cross Objections and he had been supplied copy of the said Cross Objections, but the same have not been listed for consideration. After going through the

complete records, I find that the Cross Objections were filed on 13.7.83, but for the reasons best known to the respondents no. 1 and 2, office objections were not removed. The office objections were required to be removed under the orders of this Court latest by 3.5.85.

7. The office objections having not been removed the Cross Objections could not be registered. As the office objections have not been removed, I am unable to entertain the Cross Objections, they are accordingly dismissed.

[R.S. GARG, J.]

pirzada/-